

CITIES AND TOWNS BULLETIN

AND UNIFORM COMPLIANCE GUIDELINES ISSUED BY STATE BOARD OF ACCOUNTS

September 2003

BIDS AND CONTRACTS - PETROLEUM PRODUCTS

IC 5-22-17-10 allows a purchasing agent to award a contract for petroleum products to:

- (1) the lowest responsible and responsive offeror, or
- (2) all responsible and responsive offerors.

The contract may allow for the escalation and de-escalation of price.

Where a contract is awarded to all responsible and responsive offerors, the purchasing agent must purchase the petroleum products from the lowest of the responsible and responsive bidders. The contract must provide that the bidder from whom petroleum products are being purchased shall provide five (5) business days written notice of any change in price. Upon receipt of written notice, the purchasing agent shall request current price quotes in writing based upon terms and conditions of the original offer (as awarded) from all successful responsible and responsive offerors. The purchasing agent shall record the quotes in minutes or memoranda. The purchasing agent shall purchase the petroleum products from the lowest responsible and responsive offeror, taking into account the price change of the current supplier and the price quotes of the other responsible and responsive offerors.

IC 5-22-17-10(a) defines "petroleum products" to mean, gasoline, fuel oils, lubricants, or liquid asphalt.

CUMULATIVE FUNDS FOR PARKS IN CITIES OPERATING UNDER IC 36-10-4

In those cities where the common council has adopted all or a part of IC 36-10-4, a cumulative building and sinking fund may be established pursuant to IC 36-10-4-36. A tax levy not to exceed three and thirty-three hundredths cents (\$.0333) may be levied annually. Various advertisements, public hearings and approval by the Department of Local Government Finance are required.

1937 FIREFIGHTERS' PENSION FUND-OFFICIAL BOND

Public Law 173, House Enrolled Act 1242, Acts of 2003, amended IC 36-8-7-10 which sets out the requirements for the faithful performance bond for the 1937 Firefighters' Pension Fund. IC 36-8-7-10(c) requires the fiscal officer to keep a separate account of the 1937 fund and shall fully and accurately set forth a statement of all money received and paid out by him. The officer shall, on the first Monday of January and June of each year, make a report to the local board of all money received and distributed by him. The president of the local board shall execute the officer's bond in the sum the board considers adequate, conditioned that the fiscal officer will faithfully discharge the duties of the fiscal officer's office and faithfully account for and pay over to the persons authorized to receive all money that comes in the fiscal officer's hands by virtue of the fiscal officer's office. The bond and sureties must be approved by the local board and filed with the executive of the unit.

With the passage of the aforementioned law, there is no longer a requirement that the president of the fire pension board obtain an official bond. Additionally, the official bond of the clerk-treasurer or controller should already contain coverage for handling such funds.

Each clerk-treasurer or controller that handles such funds needs to verify with his/her insurance agent that sufficient coverage exists to satisfy the requirements of the law.

FIREFIGHTERS AND POLICE OFFICERS
WORKER'S OCCUPATIONAL DISEASE INSURANCE

IC 22-3-7-2 authorizes the common council of a city to include firefighters and police officers, who are members of their respective pension funds, under worker's occupational disease insurance coverage for medical benefits only. A listing is included in the statute as to the benefits included within the term medical benefits.

LOCAL LAW ENFORCEMENT CONTINUING EDUCATION FUND-
SOURCES OF REVENUE

The following types of revenue shall be deposited into the local law enforcement continuing education fund established under IC 5-2-8-2:

1. Law Enforcement Continuing Education fees (IC 33-19-8-4 and IC 33-19-8-6)
2. Inspection of Motor Vehicles fees (IC 9-29-4-2)
3. Vehicle Accident Report fees (IC 9-29-11-1)
4. Handgun Licenses fees (IC 35-47-2-3)
5. Proceeds from the Sale of Confiscated Weapons (IC 35-47-3-2)

LAW ENFORCEMENT CONTINUING EDUCATION PROGRAM FEES

1. Each Court is to assess a three dollar (\$3) law enforcement continuing education program fee in each action in which a defendant is found to have: (1) committed a crime; (2) violated a statute defining an infraction; or (3) violated an ordinance of a municipal corporation. [IC 33-19-6-7(c)]
2. Monthly, a county, city or town court clerk is to transmit the law enforcement continuing education fees collected to the county, city or town fiscal officer. [IC 33-19-5-1, IC 33-19-5-2, IC 33-19-5-3]
3. The fiscal officer shall deposit the fees into either the County User Fee Fund or the City or Town User Fee Fund. [IC 33-19-5-1, IC 33-19-5-2, IC 33-19-5-3]
4. A law enforcement agency may receive funds from a County User Fee Fund or a City or Town User Fee Fund by filing a claim with the county, city or town fiscal officer. The claim shall include a "verified statement" of cause numbers for fees collected that are attributable to the law enforcement efforts to the agency. Payment of the claimed amount from a County User Fee Fund or a City or Town User Fee Fund may be made without appropriation. [IC 5-2-8-2]
5. On receipt of the amount claimed by the law enforcement agency, the city or town fiscal officer shall place the amount received into the Local Law Enforcement Continuing Education Fund. [IC 5-2-8-2(b)]
6. Funds received by a law enforcement agency shall be used for the continuing education and training of law enforcement officers employed by the agency and for equipment and supplies for law enforcement purposes. [IC 5-2-8-6]
7. Amounts claimed for expenditures from the Local Law Enforcement Continuing Education Fund must have been appropriated prior to expenditure either through the normal budget process or by additional appropriation. [IC 33-19-8-4]
8. Any funds remaining in the Local Law Enforcement Continuing Education Fund at year end do not revert.

INSPECTION OF MOTOR VEHICLES PRIOR TO REGISTRATION

IC 9-17-2-12 concerns certificates of title of any motor vehicle or recreational vehicle. This statute states in part “. . . application for a certificate of title for a motor vehicle or recreational vehicle may not be accepted by the bureau unless the motor vehicle or recreational vehicle has been inspected by (1) one of the following:

- (1) An employee of a dealer designated by the bureau to perform an inspection.
- (2) A military policeman assigned to a military post in Indiana.
- (3) A police officer.
- (4) A designated employee of the bureau . . .”

A person inspecting such vehicle shall make a record of inspection upon the application form, as prepared by the bureau, and verify the facts set out in said application.

The following procedures are recommended for a municipality to impose an inspection fee.

1. If the legislative body of a municipality wishes to authorize the imposition of a fee for inspecting motor vehicles, the city or town attorney should be consulted for his or her guidance in preparing and enacting an ordinance listing the inspection fee to be charged and how such revenues should be handled. IC 9-29-4-2 states that the fee may not exceed five dollars (\$5).
2. In the enabling ordinance, it is suggested a procedure for handling the fees be established similar to those prescribed by the State Board of Accounts for accident report copy fees and handgun license applications.
 - (a) Issue a receipt, General Form No. 352, for each fee collected.
 - (b) Remit the receipts to the clerk-treasurer or controller at least once each week.
 - (c) The clerk-treasurer or controller shall issue an official receipt for remittance specifying on such receipt the number of general receipts included. (For instance: General Receipts No. 1-4, four at \$5.00, \$20.00.)
 - (d) The clerk-treasurer or controller shall receipt the fees to the local law enforcement continuing education fund. Such receipts shall be deposited in the municipality's general bank account. A separate depository account is not required.

VEHICLE ACCIDENT REPORTS

The following is a list of statutes that apply to accident reports and fees that may be charged.

IC 9-26	Accidents and Accident Reports
IC 9-26-1	Duties of Drivers, Owners, and Passengers
IC 9-26-1-7	City or Town Ordinances; filing of Accident Reports; Confidentiality
IC 9-26-2	Duties of Law Enforcement Officers and Accident Reports
IC 9-29	Fees
IC 9-29-11	Fees Under IC 9-26

IC 9-29-11-1 states that the main department, office, agency, or other person under whose supervision a law enforcement officer carries on the law enforcement officers' duties may charge a fee that is fixed by ordinance of the fiscal body in an amount not less than three dollars (\$3) for each report. The fee collected shall be deposited in the local law enforcement continuing education fund.

The following procedure is prescribed for accounting for vehicle accident report fees.

1. If not already done, the legislative body should adopt an ordinance authorizing a fee for furnishing duplicate accident reports of not less than three dollars (\$3).
2. When the fee is charged, the official should issue a receipt, General Form No. 352, for each fee collected.

VEHICLE ACCIDENT REPORTS (CONTINUED)

3. The receipts and fees collected should be remitted to the clerk-treasurer or city controller at least once each week.
4. The clerk-treasurer or controller shall issue an official receipt for the remittance specifying on such receipt the number of general receipts accounted for. (For example, general receipts # 1-20, \$60.00.)
5. The clerk-treasurer or controller shall receipt the fees to the local law enforcement continuing education fund. A separate depository account is not required.

HANDGUN LICENSES

IC 35-47 states in part:

“ . . . The law enforcement agency which accepts an application for a handgun license shall collect a ten dollar (\$10) application fee, five dollars (\$5) of which shall be refunded if the license is not issued. The fee shall be deposited into the local law enforcement continuing education fund.

“The state board of accounts shall establish rules for the proper accounting and expenditure of funds collected under this subsection. . .” [See IC 35-47-2-3(b)]

In keeping with the provisions of this statute, the following procedure is prescribed for accounting for such application fees:

- (1) Issue a Receipt, General Form No. 352, for each fee collected.
- (2) Remit receipts to the clerk-treasurer or controller at least once each week.
- (3) The clerk-treasurer or controller shall issue a official receipt for remittance specifying on such receipt the number of general receipts accounted for. (For example: General Receipt Nos. 1-4, \$40.00)
- (4) The clerk-treasurer or controller shall receipt the fees to the local law enforcement continuing education fund and deposit such receipts in the municipality's general corporation bank account. A separate depository account is not required.
- (5) If the application is turned down, a refund shall be made from the local law enforcement continuing education fund without appropriation upon the basis of the claim filed, allowed and paid in the proper legal manner. No refunds are to be made from any other fund of the unit.

DISPOSAL OF CONFISCATED WEAPONS

All firearms confiscated pursuant to statute shall, upon conviction of the person for the offence for which the confiscation was made, be disposed of in accordance with IC 35-47-3.

IC 35-47-3-2 state as follows:

“ . . . (a) This section applies only to firearms which are not required to be registered in the National Firearms Registration and Transfer Record.

(b) Firearms shall be returned to the rightful owner at once following final disposition of the case if a return has not already occurred under the terms of IC 35-33-5. If the rightful ownership is not known the law enforcement agency holding the firearm shall make a reasonable attempt to ascertain the rightful ownership and cause the return of the firearm. However, nothing in this chapter shall be construed as requiring the return of firearms to rightful owners who have been convicted for the misuse of firearms. In such cases, the

DISPOSAL OF CONFISCATED WEAPONS

(Continued)

court may provide for the return of the firearm in question or order that the firearm be at once delivered:

- (1) except as provided in subdivision (2), to the sheriff's department of the county in which the offense occurred; or
- (2) to the city or town police force that confiscated the firearm, if:
 - (A) a member of the city or town police force confiscated the firearm; and
 - (B) the city or town has a population of more than two thousand five hundred (2,500) and less than two hundred fifty thousand (250,000).
 - (c) The receiving law enforcement agency shall dispose of firearms under subsection (b), at the discretion of the law enforcement agency, not more than one hundred twenty (120) days following receipt by use of any of the following procedures:
 - (1) Public sale of the firearms to the general public as follows:
 - (A) Notice of the sale shall be:
 - (i) posted for ten (10) days in the county courthouse in a place readily accessible to the general public; and
 - (ii) advertised in the principal newspaper of the county for two (2) days in an advertisement that appears in the newspaper at least five (5) days prior to the sale.
 - (B) Disposition of the firearm shall be by public auction in a place convenient to the general public, with disposition going to the highest bidder. However, no firearm shall be transferred to any bidder if the bidder is not lawfully eligible to receive and possess firearms according to the laws of the United States and Indiana.
 - (C) All handguns transferred under this subdivision shall also be transferred according to the transfer procedures set forth in this article.
 - (D) Money collected pursuant to the sale shall first be used to defray the necessary costs of administering this subdivision with any surplus to be:
 - (i) deposited into the receiving law enforcement agency's firearms training fund, if the law enforcement agency is a county law enforcement agency, or into a continuing education fund established under IC 5-2-8-2, if the law enforcement agency is a city or town law enforcement agency;
 - (ii) used by the agency exclusively for the purpose of training law enforcement officers in the proper use of firearms or other law enforcement duties, if the law enforcement agency is a county law enforcement agency, or for law enforcement purposes, if the law enforcement agency is a city or town law enforcement agency.
 - (2) Sale of the firearms to a licensed firearms dealer as follows:
 - (A) Notice of the sale must be:
 - (i) posted for ten (10) days in the county courthouse in a place readily accessible to the general public; and
 - (ii) advertised in the principal newspaper of the county for two (2) days in an advertisement that appears in the newspaper at least five (5) days before the sale.
 - (B) Disposition of the firearm shall be by auction with disposition going to the highest bidder who is a licensed firearms dealer.
 - (C) Money collected from the sales shall first be used to defray the necessary costs of administering this subdivision and any surplus shall be:
 - (i) deposited into the receiving law enforcement agency's firearms training fund or other appropriate training activities fund; and
 - (ii) used by the agency exclusively for the purpose of training law enforcement officers in the proper use of firearms or other law enforcement duties.
 - (3) Sale or transfer of the firearms to another law enforcement agency.
 - (4) Release to the state police department laboratory or other forensic laboratory administered by the state or a political subdivision (as defined in IC 36-1-2-13) for the purposes or research, training, and comparison in conjunction with the forensic examination of firearms evidence.

DISPOSAL OF CONFISCATED WEAPONS

(Continued)

(5) Destruction of the firearms.

(d) Notwithstanding the requirement of this section mandating disposal of firearms not more than one hundred twenty (120) days following receipt, the receiving law enforcement agency may at its discretion hold firearms it may receive until a sufficient number has accumulated to defray the costs of administering this section if a delay does not exceed one hundred eighty (180) days from the date of receipt of the first firearm in the sale lot. In any event, all confiscated firearms shall be disposed of as promptly as possible.

(e) When a firearm is delivered to the state police department laboratory or other forensic laboratory under subsection (c) (4) and the state police department laboratory or other forensic laboratory determines the laboratory has no further need for the firearm in question, the laboratory shall return the firearm to the law enforcement agency for disposal under subsection (c)."

BUY MONEY

The following procedures should be followed if a municipality wishes to obtain an appropriation and make expenditures for buy money or payments to informants:

- 1) Under IC 36-1-3 an ordinance should be passed allowing this type of program and associated expenditures;
- 2) An appropriation for such purpose must be obtained in the manner authorized by state statutes;
- 3) Petty cash fund procedures are to be followed as authorized by IC 36-1-8-3; and
- 4) A minimum documentation procedure must be follow, similar to either:
 - a.) "Guidelines for the Expenditure of Confidential Funds", published March 27, 1992, by the Indiana Criminal Justice Institute.
 - b.) "Guidelines for Obtaining, Using and Accounting For Confidential Funds Used in Support of Criminal Investigations", (Revised S.O.P. INV-009), by the Indiana State Police Department.

If you do not have copies of these two guidelines, please contact our office.

COMPENSATION OF OFFICERS AND EMPLOYEES

City Officers and Employees

Elected City Officials

IC 36-4-7-2 states:

“(a) As used in this section, “compensation” means the total of all money paid to an elected city officer for performing duties as a city officer, regardless of the source of funds from which the money was paid.”

“(b) The city legislative body shall, by ordinance, fix the annual compensation of all elected city officers. The ordinance must be published under IC 5-3-1, with the first publication at least thirty (30) days before final passage by the legislative body.”

“(c) The compensation of an elected city officer may not be changed in the year for which it is fixed, nor may it be reduced below the amount fixed for the previous year.”

Appointive Officers, Deputies and Other Employees (Except Police Officers and Firefighters)

IC 36-4-7-3 states:

“(a) This section does not apply to compensation paid by a city to members of its police and fire departments.

(b) Subject to the approval of the city legislative body, the city executive shall fix the compensation of each appointive officer, deputy, and other employee of the city. The legislative body may reduce but may not increase any compensation fixed by the executive. Compensation must be fixed under this section before; (1) September 20 for a third class city, and (2) September 30 for a second class city; of each year for the ensuing budget year.

(c) Compensation fixed under this section may not be increased during the budget year for which it is fixed, but may be reduced by the executive.

(d) Notwithstanding subsection (b), the city clerk may, with the approval of the legislative body, fix the salaries of deputies and employees appointed under IC 36-4-11-4.”

COMPENSATION OF OFFICERS AND EMPLOYEES (continued)

City Officers and Employees (continued)

Additional Compensation From Utilities or Functions

IC 36-4-7-4 states

“(a) Subject to the approval of the city legislative body, the city executive may provide that city officers and employees receive additional compensation for services that: (1) are performed for the city, (2) are not governmental in nature; and (3) are connected with the operation of a municipally owned utility or function.

(b) Subject to the approval of the executive and legislative body, the administrative agency operating the utility or function shall fix the amount of the additional compensation, which shall be paid from the revenues of the utility or function.”

In accordance with the provisions of IC 18-2-1-12 [Repealed, See IC 36-4-7-4], the award of compensation shall plainly specify both the amount and the recipient, shall establish that the services performed are other than governmental, shall be awarded by the administrative authority in charge of the utility, and shall be approved by both the common council and the mayor.

It is our audit position that if the official records of the utility or function do not show the award of this additional compensation and the official records of the civil city do not show approval of the mayor and common council by ordinance or resolution as the statutes regulating the utility might provide, then there is no authority to make any payment.

Police Officers and Firefighters

IC 36-8-3-3(d) states:

“The annual compensation of all members of the police and fire department and other appointees shall be fixed by ordinance of the legislative body before: (1) September 20 for a second class city; and (2) September 20 for a third class city; of each year for the ensuing budget year. The ordinance may grade the members of the departments and regulate their pay by rank as well as by length of service. If the legislative body fails to adopt an ordinance fixing the compensation of members of the police or fire department, the safety board may fix their compensation, subject to change by ordinance.”

Salary Schedules

IC 36-4-7-5 states:

“Salaries of city officers and employees shall be scheduled as provided in the budget classifications prescribed by the State Board of Accounts.”

COMPENSATION OF OFFICERS AND EMPLOYEES (continued)Town Officers and Employees

IC 36-5-3-2 states:

“(a) As used in this section, “compensation” means the total of all money paid to an elected town officer for performing duties a town officer, regardless of the source of the funds from which the money is paid.

(b) The town legislative body shall, by ordinance, fix the compensation of its own members, the town clerk-treasurer and the town marshal. The legislative body shall provide reasonable compensation for other town officers and employees.

(c) The compensation of an elected town official may not be changed in the year for which it is fixed, nor may it be reduced below the amount fixed for the previous year.

(d) The legislative body may provide that town officers and employees receive additional compensation for services that: (1) are performed for the town; (2) are not governmental in nature; and (3) are connected with the operation of a municipally owned utility or function. Subject to the approval of the legislative body, the administrative agency operating the utility or function shall fix the amount of the additional compensation, which shall be paid from the revenues of the utility or function.”

Compensation of all town officers and employees shall be fixed by an ordinance of the town council, and for other than elected town officials, this compensation may be changed by another ordinance of the town council at any time. There is no limitation upon the amount fixed, only to the extent of available appropriations where tax funds are involved. (IC 36-5-3-2) At the time such compensation is fixed, it may be prorated between the general fund or any other applicable funds of the town, as well as any available funds.

The approval of a claim for increased compensation does not authorize the town clerk-treasurer to pay such increase unless it is specifically provided for by ordinance of the town council.

We recommend a salary ordinance for officials and employees for the next succeeding year be enacted by the town council annually on or before August of each year and made a part of the minutes of the town council. This action is recommended in order for town officials to have such information available prior to making out the annual budget for the next year's costs of operations.

SEWER LIENS – RECORDING AND CERTIFYING

The officer charged with collection of unpaid sewage fees and penalties shall enforce their payment. The officer may defer enforcing the collection of the unpaid fees and penalties assessed until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days.

As often as the officer determines is necessary in a calendar year, the officer shall prepare either of the following:

- (1) A list of the delinquent fees and penalties that are enforceable, which must include the following:
 - (A) The name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent.
 - (B) A description of the premises, as shown by the records of the county auditor.
 - (C) The amount of the delinquent fees, together with the penalty.
- (2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.

SEWER LIENS – RECORDING AND CERTIFYING
(continued)

The officer shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in accordance with the fee schedule established in IC 36-2-7-10. The officer shall then mail to each property owner on the list or on an individual instrument a notice stating that a lien against the owner's property has been recorded. Except for a county having a consolidated city, a service charge of five dollars (\$5), which is in addition to the recording fee charged, shall be added to each delinquent fee that is recorded. The amount of the recording fee should also include the amount required to record as well as release the lien.

Using the lists and instruments prepared and recorded, the officer shall, not later than ten (10) days after the list or each individual instrument is recorded, certify to the county auditor a list of the liens that remain unpaid for collection in the next May. The county and its officers and employees are not liable for any material error in the information on this list.

The officer shall release any recorded lien when the delinquent fees, penalties, service charges, and recording fees have been fully paid. The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

Except in a county containing a consolidated city, on receipt of the list, the county auditor of each county shall add a fifteen dollar (\$15) certification fee for each lot or parcel of real property on which fees are delinquent, which fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the municipality the delinquent fees, penalties, service charges, recording fees, and certification fees, which are due not later than the due date of the next May installment of property taxes. The county treasurer shall then include any unpaid charges for the delinquent fee, penalties, service charge, recording fee, and certification fee to the owner or owners of each lot or parcel of property, at the time the next cycle's property tax installment is billed.

Except in a county containing a consolidated city, after certification of liens, the officer may not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor.

If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.

At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the municipality. The county treasurer shall retain the service charges and certification fees that have been collected, and shall deposit them in the county general fund.

Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by IC 36-9-23-32(d), files a verified demand with the county auditor.

A board may write off a fee or penalty that is for less than forty dollars (\$40). [IC 36-9-23-33]

RETAINAGE ON PUBLIC CONTRACTS
IN EXCESS OF \$100,000

Pursuant to IC 36-1-12-14, it is required that when public works contracts are awarded by a city or town for certain public works or improvements and such contracts exceed \$100,000, such contracts shall include provisions for the retainage of portions of payments by the board to contractors, by contractors to subcontractors, and for the payment of subcontractors. This statute applies to the construction, alteration, or repair of all buildings or other improvements the cost of which is paid from public funds or from special assessments imposed and levied on real estate, land and lots benefited thereby but shall not include highways, roads, streets, alleys, bridges and appurtenant structures situated on streets, alleys and dedicated highway rights-of-way.

RETAINAGE ON PUBLIC CONTRACTS
IN EXCESS OF \$100,000
(Continued)

At the discretion of the contractor, the retainage shall be held by the board or shall be placed in an escrow account with a bank, savings and loan institution, or the state as escrow agent. The escrow agent shall be selected by mutual agreement between the board and contractor or contractor and subcontractor under a written agreement among the bank or savings and loan institution and (1) the board and the contractor; or (2) the subcontractor and the contractor.

Where an escrow agent is selected, it is required that at the time any retainage is withheld the amount of the retainage shall be placed in an escrow account with the escrow agent, to be promptly invested by the escrow agent in its discretion. The escrowed principal and the income from the investments shall be held by the escrow agent until receipt of a notice releasing the funds in accordance with the terms of the law and the agreement.

When a bank or savings and loan institution is selected as escrow agent, the amount of the retainage withheld shall be paid by warrant to the escrow agent and, when paid, shall be treated in the same manner as any other payment on the contract, with the escrow agent being required to deposit, invest and otherwise account for the escrowed principal and interest, in accordance with the law and the terms of the agreement. The escrow account will not be carried on the records of the city or town.

The law provides that the escrow agent shall be compensated for its service as the parties may agree in an amount comparable with fees being charged for the handling of escrow accounts of similar size and duration. The fee shall be paid from the escrowed income of the escrowed account.

To determine the amount of retainage to be withheld, the board shall:

- (1) withhold no more than ten percent (10%) of the dollar value of all work satisfactorily completed until the public work is fifty percent (50%) completed, and nothing further after that; or
- (2) withhold no more than five percent (5%) of the dollar value of all work satisfactorily completed until the public work is substantially completed.

If upon substantial completion of the public work minor items remain uncompleted within sixty-one (61) days after the date of substantial completion, an amount equal to two hundred percent (200%) of the value of each item as determined by the architect-engineer shall be withheld until the item is completed.

There is also a requirement that the contractor furnish a performance bond equal to the contract price.

If the contractor chooses to have the retainage held by the board then the board is not required to pay interest on the amounts of retainage it holds. However, such amounts held by the board will be carried on the records of the city or town as an agency fund.

BANK/CREDIT CARD PAYMENTS TO CITIES AND TOWNS AND UTILITIES

A payment to a city or town or a municipally owned utility may be made by any of the following financial instruments that the fiscal body of the city or town or the board of a municipally owned utility authorizes for use:

1. Cash
2. Check
3. Bank Draft
4. Money Order
5. Bank card or credit card
6. Electronic fund transfer
7. Any other financial instrument authorized by the fiscal body

BANK/CREDIT CARD PAYMENTS TO CITIES AND TOWNS AND UTILITIES

(Continued)

If there is a charge to the city or town or municipally owned utility for the use of a financial instrument, the city or town or municipally owned utility may collect a sum equal to the amount of the charge from the person who uses the financial instrument.

If authorized by the fiscal body of the city or town or the board of the municipally owned utility, the city or town or municipally owned utility may accept payments with a bank card or credit card. However, the procedure authorized for a particular type of payment must be uniformly applied to all payments of the same type.

The city or town or municipally owned utility may contract with a bank card or credit card vendor for acceptance of bank cards or credit cards. The city or town or municipally owned utility may pay any applicable bank card or credit card service charge associated with the use of a bank card or credit card. (IC 36-1-8-11)

BANK/CREDIT CARD PAYMENTS TO CITY AND TOWN COURTS

The clerk of a city or town court may contract with a bank or credit card vendor for acceptance of bank or credit cards in payment of bail, fines, civil penalties, court fees and costs, or fees for the preparation, duplication, or transmission of documents. However if there is a vendor transaction charge, or discount fee, whether billed to the clerk or charged directly to the clerk's account, the clerk shall collect a fee from the person using the bank or credit card.

The court clerk shall forward credit card service fees collected to the city or town fiscal officer. These fees may be used without appropriation to pay transaction charges or discount fees charged by the bank or credit card vendor. (IC 33-19-6.5)

HAZARDOUS MATERIALS RESPONSE FUND

A fire department imposing a charge for hazardous materials cleanup costs may bill the responsible party for the total value of the assistance provided, as determined from the State Fire Marshal's schedule of service charges issued under IC 36-8-12-16 (e).

Money collected must be deposited in a hazardous materials response fund or the general fund of the city or town that established the fire department under IC 36-8-2-3 or IC 36-8-13-3 and may be used only for the following:

1. Purchase of supplies and equipment used in providing hazardous materials emergency assistance.
2. Training for members of the fire department in skills necessary for providing hazardous materials emergency assistance.
3. Payment to persons with which the fire department contracts to provide services related to the hazardous materials emergency assistance provided by the fire department.

A fire department may not bill for services provided that duplicate services provided by another governmental entity.

The responsible party billed for services may elect to reimburse the fire department by providing replacement materials that are of equal or greater value than those expended by the fire department in responding to the emergency.

HAZARDOUS MATERIALS RESPONSE FUND

(Continued)

A fire department that imposes a service charge and maintains an action for reimbursement under IC 13-25-6-5 may recover all costs of the action, including attorney's fees.

A responsible party is subject to a penalty for failure to pay the full amount of a charge made within sixty (60) days after the issuance of the bill for payment by the fire department. The amount of the penalty is ten percent (10%) of the amount of the charge that remains unpaid on the due date.

The fiscal body of each city or town that establishes a fire department under IC 36-8-2-3 may, by ordinance or resolution, establish a hazardous materials response fund.

The hazardous materials response fund shall be administered by the unit's fiscal officer, and the expenses of administering the fund shall be paid from money in the fund. Money in the fund not currently needed to meet the obligations of the fund may be invested in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of a particular fiscal year does not revert to the unit's general fund.

LIENS ON NUISANCE PROPERTIES

If a condition violating an ordinance of a municipal corporation exists on real property, officers of the municipal corporation may enter onto that property and take appropriate action to bring the property into compliance with the ordinance. However, before action to bring compliance may be taken, all persons holding a substantial interest in the property must be given a reasonable opportunity of a least ten (10) days but not more than sixty (60) days to bring the property into compliance. If the municipal corporation takes action to bring compliance, the expenses incurred by the municipal corporation to bring compliance constitute a lien against the property. The lien is superior to all other liens except liens for taxes, in an amount that does not exceed:

- (1) two thousand five hundred dollars (\$2,500) for real property that:
 - (A) contains one (1) or more occupied or unoccupied single or double family dwelling or the appurtenances or additions to those dwellings; or
 - (B) is unimproved; or
- (2) ten thousand dollars (\$10,000) for all other real property.

The municipal corporation may issue a bill to the owner of the real property for the costs incurred by the municipal corporation in bringing the property into compliance with the ordinance, including administrative costs and removal costs. If the owner of the real property fails to pay a bill issued, the municipal corporation may, after thirty (30) days, certify to the county auditor the amount of the bill, plus any additional administrative costs incurred in the certification. The auditor shall place the total amount certified on the tax duplicate for the property affected, and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the general fund of the municipal corporation. (IC 36-1-6-2)

PROBATION USER'S FEES – CITY AND TOWN COURTS

Public Law 277, Acts of 2003, allows the clerk of a city or town court to collect probation user's fees in those courts that operate a probation department. If the clerk collects the fees, the clerk may keep not more the three percent (3%) of the fees to defray the administrative cost of collecting the fees and shall deposit this amount into the clerk's record perpetuation fund. If requested to do so by the city or town fiscal officer, the clerk shall transfer not more than three percent (3%) of the fees to the city or town general fund. The new administrative fee (discussed later) is not to be used to compute the amount of the fees claimed by the court clerk or city or town fiscal officer. This public law creates a new fee called an Administrative Fee which is in addition to the initial and monthly user's fees. The fee is \$100 for persons convicted of a felony and \$50 for persons convicted of a misdemeanor and must be used for salary increases for probation officers. The fees are to be deposited in the Supplemental Adult Probation Service fund. (IC 35-38-2-1)

GASB 34 REQUIREMENTS

Governmental Accounting Standards Board (GASB) Statement No. 34, and related statements and official pronouncements, have made significant changes in the reporting requirements for cities and towns. GASB Statement No. 34 reemphasizes the role of the management of the cities and towns in determining the content of their financial statements. GASB Statement No. 34 has a phased in implementation period, and will apply differently for certain cities and towns. Generally, all second class cities, as well as all cities and towns who issue a Comprehensive Annual Financial Report (CAFR), will be required to fully implement the requirements of GASB Statement No. 34. Most other cities and towns will be required to implement GASB Statement No. 34 as well. But since the financial statements for the governmental (generally non-utility) funds for those cities and towns are presented on a cash basis, the reporting requirements will be less extensive.

GASB Statement No. 34 prescribes a staggered implementation period in three different phases. Phase I governments are required to implement GASB Statement No. 34 for the first financial reporting period beginning after June 15, 2001. Phase II governments are required to implement GASB Statement No. 34 for the first financial reporting period beginning after June 15, 2002. All other governments, referred to as Phase III Governments, are required to implement GASB Statement No. 34 for the first financial reporting period beginning after June 15, 2003. Phase I governments are defined as those with at least \$100 million in governmental and enterprise fund revenue (excluding extraordinary items) as reported in its 1999 financial report. Phase II governments are defined as those with at least \$10 million, but less than \$100 million, in governmental and enterprise fund revenue (excluding extraordinary items) as reported in its 1999 financial report. Phase III governments are defined as those with less than \$10 million in governmental and enterprise fund revenue (excluding extraordinary items) as reported in its 1999 financial report.

Phase I cities and towns have implemented the provisions of GASB Statement No. 34 for their 2002 fiscal year. Phase II governments will implement the applicable provisions of GASB Statement No. 34 for their first financial Report that includes 2003 fiscal information. Phase III governments will implement the applicable provisions of GASB Statement No. 34 for their first financial report that includes 2004 fiscal information.

A list of Phase II cities and towns is included on page 16. Generally, those cities and towns not included on this Phase II list (that were not Phase I governments) are defined as Phase III cities and towns. The exception is those smaller towns that do not own or operate a utility. Those towns will not be required to implement the provisions of GASB Statement No. 34. A shorter version of an audit, referred to as an examination, will be performed for those towns.

The major implementation requirements for GASB Statement No. 34 are as follows (these requirements do not apply to those towns who do not own or operate a utility):

1. All cities and towns will be required to include a Management Discussion and Analysis (MD&A) in its audit report. The MD&A will include a discussion and analysis of certain specific financial events, as prescribed by paragraph 11 of GASB Statement No. 34. For most cities and towns, the MD&A will be included in the financial report as Required Supplementary Information (RSI).
2. All cities and towns will be required to report as required supplementary information (RSI) certain budgetary comparison schedules for its general fund and major special revenue funds (see discussion below on major funds).
3. All cities and towns will be required to report major funds. Major funds are generally defined as those with significant financial transaction or balances in relation to other similar funds. The general fund is always defined as a major fund, as are other individual significant funds. For the most part, all utilities will be reported as major funds, due the interest in those by the investment community and other interested parties. All funds not defined as major funds will be aggregated and reported together as other (nonmajor) funds.
4. All cities and towns will be required to include, on a prospective basis, infrastructure assets with the capital assets of its governmental fund (formerly referred to as general fixed assets or the general fixed asset account group). In addition, Phase II cities and towns are required to report infrastructure assets on a retroactive basis, which may be delayed for four years after the first year GASB Statement No. 34 is implemented. In certain cases, the city or town might deem estimation of infrastructure assets more viable than trying to obtain cost figures. Reasonable methods of estimation of infrastructure assets is

GASB 34 REQUIREMENTS

(Continued)

acceptable, subject to verification of the reasonableness of the methodology used and general accuracy of amounts derived from the estimation in future audits.

5. Certain other changes in reporting methodology which are too numerous to mention here.

Note that information presented as RSI is not covered by the auditor's opinion in the Independent Auditors' Report. Auditors are required to perform certain limited procedures to ascertain the information contained in the RSI is substantially correct in relation to the financial statements as a whole. Omitted, incomplete or inaccurate required supplementary information will generally result in an explanatory paragraph included after the auditors' opinion in the Independent Auditors' Report. This type of explanatory paragraph would describe the fact the required supplementary information is omitted, incomplete or inaccurate. An explanatory paragraph is not a qualification to auditors' opinion. However, the presence of an explanatory paragraph in the Independent Auditors' Report should be given due consideration, particularly if the city or town has outstanding debt or other items of significance or public interest.

We have discussed the general provisions of GASB Statement No. 34 at city and town training meetings and we plan to continue the dialogue at future meetings. GASB Statement No. 34, and its related pronouncements, may be obtained from the GASB. Refer to the GASB website at: <http://www.gasb.org>. In addition, the GASB website contains financial reports for certain governments that have already implemented GASB Statement No. 34, if you would like to refer to actual GASB 34 financial statements.

The following is a listing of Phase II cities and towns. This list was obtained by State Board of Accounts staff from financial reports filed by the State Board of Accounts for the 1999 fiscal year. This list includes those cities and towns (except Phase I cities and towns) that report revenues of its governmental and enterprise funds (excluding extraordinary items) in excess of \$10 million. This is believed to be an accurate and comprehensive list of Phase II cities and towns. Keep in mind that it is possible that certain cities and towns that qualify for Phase II implementation might have inadvertently been omitted from this list. If in doubt, refer to 1999 revenue for governmental funds and enterprise funds (excluding extraordinary items).

Anderson	Hammond	Plainfield
Auburn	Highland	Plymouth
Bedford	Hobart	Portage
Bloomington	Huntington	Rensselaer
Boonville	Jasper	Richmond
Brownsburg	Jeffersonville	Rising Sun
Carmel	Kokomo	Schererville
Clarksville	La Porte	Scottsburg
Columbia City	Lafayette	Seymour
Columbus	Lawrence	Shelbyville
Connersville	Lawrenceburg	Speedway
Crawfordsville	Lebanon	Tell City
Crown Point	Linton	Terre Haute
Dyer	Logansport	Tipton
East Chicago	Marion	Valparaiso
Edinburgh	Merrillville	Vincennes
Elkhart	Michigan City	Warsaw
Fishers	Mishawaka	Washington
Frankfort	Muncie	West Lafayette
Franklin	Munster	
Goshen	New Albany	
Greendale	New Castle	
Greenfield	Noblesville	
Greenwood	Peru	

RAINY DAY FUND

The following two laws concerning the establishment of a rainy day fund were passed by the General Assembly this year.

Public Law 173 Version

IC 36-1-8-5.1 states, as follows:

“A political subdivision may establish a rainy day fund by the adoption of:

- (1) an ordinance, in the case of county, city, or town; or
 - (2) a resolution, in the case of any other political subdivision.
- (b) An ordinance or a resolution adopted under this section must specify the following:

- (1) The purposes of the rainy day fund.
- (2) The sources of funding for the rainy day fund.
- (c) The rainy day fund is subject to the same appropriation process as other funds that

receive tax money.

(d) In any fiscal year, a political subdivision may transfer not more than ten percent (10%) of the political subdivision’s annual budget for that fiscal year, adopted under IC 6-1.1-17, to the rainy day fund.

(e) A political subdivision may use only the funding sources specified in the ordinance or resolution establishing the rainy day fund unless the political subdivision adopts a subsequent ordinance or resolution authorizing the use of another funding source.

(f) The department of local government finance may not reduce the actual or maximum permissible levy of a political subdivision as a result of a balance in the rainy day fund of the political subdivision.”

IC 36-1-8-5(d) was also added which states that transfers to a political subdivision rainy day fund must be made after the last day of the political subdivision’s fiscal year and before March 1 of the subsequent calendar year.

Public Law 267 Version

IC 36-1-8-5.1 states as follows:

“(a) A political subdivision may establish a rainy day fund to receive transfers of unused and unencumbered funds under:

- (1) section 5 of this chapter;
- (2) IC 6-3.5-1.1-21.1;
- (3) IC 6-3.5-6-17.3; and
- (4) IC 6-3.5-7-17.3.

(b) The rainy day fund is subject to the same appropriation process as other funds that receive tax money. Before making an appropriation from the rainy day fund, the fiscal body shall make a finding that the proposed use of a the rainy day fund is consistent with the intent of the fund.

(c) In any fiscal year, a political subdivision may transfer under section 5 of this chapter not more than ten percent (10%) of the political subdivision’s total budget for the fiscal year to the rainy day fund.

(d) The department of local government finance may not reduce the actual or maximum permissible levy of a political subdivision as a result of a balance in the rainy day fund of the political subdivision.”